

5/8/97

IN THE SUPREME COURT OF MISSISSIPPI

NO. 93-CC-01036-SCT

DON BULLOCK

v.

MISSISSIPPI EMPLOYMENT SECURITY COMMISSION

CONSOLIDATED WITH

NO. 94-CC-00840-SCT

DON BULLOCK

v.

CITY OF LAUREL, MISSISSIPPI

BEFORE PRATHER, P.J., ROBERTS AND MILLS, JJ.

ROBERTS, JUSTICE, FOR THE COURT:

Don Bullock was an administrative employee with the City of Laurel when he qualified to run for the office of mayor of the City against the incumbent, Henry Bucklew. Bucklew gave Bullock written notice that his employment with the City was being terminated as of February 18, 1993, due to his having qualified as a candidate for municipal elective office at a time when he was a civil service employee of the City. Bucklew cited Miss. Code Ann. 21-31-27 and 21-31-75 (1972) as authority for the termination. Bullock's termination was affirmed by both the Civil Service Commission and the Jones County Circuit Court.

Bullock applied for unemployment compensation and was denied benefits, based on a finding that Bullock's termination was due to misconduct. The denial of unemployment benefits was upheld by Mississippi Employment Security Commission's appeals referees, the Commission's Board of Review, and the Jones County Circuit Court.

Bullock now appeals both the termination decision and the denial of unemployment benefits to this Court.

DISCUSSION

I. Issues I and II are essentially the same issues reworded. Bullock argues them together in his brief, and so, they will be discussed together here. WHETHER SECTIONS 21-31-27 AND 21-31-75 OF THE MISSISSIPPI CODE ANNOTATED PROHIBITS AN ADMINISTRATIVE EMPLOYEE UNDER CIVIL SERVICE FROM QUALIFYING TO RUN AS MAYOR OF THE MUNICIPALITY.

II. WHETHER SECTION 21-31-75 IS THE ONLY STATUTE APPLICABLE GOVERNING CIVIL SERVICE EMPLOYEES WHO ARE ADMINISTRATIVE OR SALARIED AS DISTINGUISHED FROM POLICEMEN AND FIREMEN AND WHETHER THE ONLY PROHIBITION IS AGAINST AN ADMINISTRATIVE EMPLOYEE ACTING AS A REPRESENTATIVE OF ANY CANDIDATE.

In his letter to Bullock terminating his employment with the City, Mayor Bucklew wrote in part:

This action is taken due to the fact that while employed as a Civil Service employee of the City of Laurel, you qualified as a candidate for office in the 1993 Municipal Election, and in accordance with Sections 21-31-27 and 21-31-75, Mississippi Code of 1972.

Miss. Code Ann. 21-31-27 and 21-31-75 read in pertinent part:

21-31-27: If any person holding any office, place, position or employment subject to civil service, actively participates in political activity in any primary or election in a municipality where he is employed, it shall be deemed cause for removal.

21-31-75: No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose. *No such employee shall engage in any political campaign as a representative of any candidate or shall engage in pernicious activities, and any person so engaging in such activities shall be subject to dismissal or demotion.*

(emphasis added).

Bullock's argument is two-fold. First, he maintains that only 21-31-75 and not 21-31-27 applies to him as an administrative employee. Second, he contends that 21-31-75 only prohibits a civil service employee from representing a candidate in a political campaign, not from actually being a candidate himself.

The Mississippi legislature has established two separate civil service systems in the state. The first, established by Miss. Code Ann. 21-31-1 through 21-31-27, applies only to "full paid employees of the fire and police departments" See *City of Laurel v. Samuels*, 469 So. 2d 530, 531 (Miss.

1985). The second civil service system was created by Miss. Code Ann. 21-31-51 through 21-31-75, and is applicable to administrative and other municipal employees on a monthly salary. *Id.* at 531. Bullock was a civil service administrative employee of the City of Laurel and therefore subject to the civil service laws found at 21-31-51 through 21-31-75. Miss. Code Ann. 21-31-27 is not, then, applicable to him as an administrative employee.

The question remains whether Miss. Code Ann. 21-31-75 prohibited Bullock from qualifying as a candidate in a municipal election while employed as an administrative employee subject to the civil service statutes. Bullock contends that it did not, and had the legislature intended that civil servants not run for office, it would have added the phrase "or be a candidate" to the statute. Bullock argues that a reading of 21-31-75 shows that the intent of the legislature was to protect a civil servant from political pressure from his superiors and others that might otherwise arise due to his employment in the municipality. Bullock suggests that the purpose of the last sentence of the section, which prevents the employee from engaging in a political campaign "as a representative of any candidate", is to protect the civil service employee so it would not be claimed that he voluntarily worked for a candidate in a political election.

The City of Laurel and the Mississippi Employment Security Commission both argue that 21-31-75 prohibited Bullock from becoming a political candidate. They maintain that Bullock's argument that in qualifying as a candidate for mayor he did not "engage in any political campaign as a representative of any candidate" is ridiculous. They urge this Court to hold that it was the legislature's intent when they used the phrase "representative of any candidate" that it necessarily encompass being a candidate since one would then be representing oneself.

Long standing precedent requires that where a statute is plain and unambiguous there is no room for construction. It is only when a statute is unclear or ambiguous that a court should look beyond that language of the statute in determining the legislature's intent. *Kerr-McGee Chem. Corp. v. Buelow*, 670 So. 2d 12, 17 (Miss. 1996); *Allred v. Webb*, 641 So. 2d 1218, 1222 (Miss. 1994); *Clark v. State ex rel. Mississippi State Medical Ass'n*, 381 So. 2d 1046 (Miss. 1980). Looking once again to the portion of 21-31-75 at conflict here, when read together with the rest of the statute, the meaning seems clear and unambiguous:

No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose. *No such employee shall engage in any political campaign as a representative of any candidate* or shall engage in pernicious activities, and any person so engaging in such activities shall be subject to dismissal or demotion.

(emphasis added).

This Court holds that the legislature's intent throughout the statute is to protect civil service employees, who by the very nature of their employment are subordinates to elected officials, from

being pressured to contribute in any way to any political campaign. This is clearly the intent of the first two sentences of the statute. The phrase "no such employee shall engage in any political campaign as a representative of any candidate" is merely an extension of this intent. Disallowing persons coming under the civil service statutes from representing a candidate in a political campaign, even on a voluntary basis, lessens the possibility of hidden pressures to do so, since there can be no defense that the person voluntarily represented a candidate.

The language of the statute does not explicitly prohibit a person from being a candidate him or herself. The City of Laurel and the Mississippi Employment Security Commission argue that such a prohibition is implied. This Court agrees that a reasonable interpretation of legislative intent would prohibit an employee from running for an office, as well as representing a political candidate. If the purpose of the statute is to prevent employees from being pressured politically against the employee's wishes, this Court extends the legislature's use of the phrase "represent a candidate" to necessarily preclude a civil servant from becoming a candidate as he would then be representing himself. There is no need for an explicit prohibition where a reasonable interpretation can be made from the plain reading of the statute.

Had Miss. Code Ann. 21-31-27 been applicable to Bullock as an administrative employee, there is the possibility that his qualifying as a candidate in a municipal election would have been cause for removal. But, Miss. Code Ann. 21-31-27 did not apply to Bullock because he was an administrative employee not employed by the fire or police department. In this case, Miss. Code Ann. 21-31-75 was the applicable statute and authorized Mayor Bucklew to fire Bullock because he qualified to run for mayor. Therefore, he was properly dismissed, and the denial of unemployment benefits was justified. This cause is affirmed on this issue in favor of both the City and the Commission and against Bullock.

III. WHETHER SECTION 21-31-75 IS UNCONSTITUTIONAL IN THAT IT VIOLATES ARTICLE 3 OF SECTION 4 OF THE MISSISSIPPI CONSTITUTION, THE FIRST AMENDMENT, THE FIFTH AMENDMENT, THE FOURTEENTH AMENDMENT, SECTION 2, AND THE FIFTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, FOR THE REASON THAT THE SAME IS TOO EXCESSIVE AN EXERCISE OF POWER, NOT REASONABLY RELATED TO A GOVERNMENTAL PURPOSE AND GOES BEYOND THE NECESSITY OF THE CASE SO AS TO BE AN ARBITRARY EXERCISE OF GOVERNMENT POWER.

Next, Bullock argues that Miss. Code Ann. 21-31-75 is unconstitutional as being over broad since it is not limited to representation of a municipal candidate, but instead encompasses candidates in any election, city, county, state, or federal. The hypothetical used by Bullock in his argument that 21-31-75 would prevent a secretary, who is an administrative employee within a municipality, from representing a county candidate, a state candidate, a federal candidate, or the President of the United States. Bullock argues that when taken in this context, the statute is too excessive an exercise of power and should be declared unconstitutional.

This Court holds that Bullock does not have standing to raise this issue since he does not argue that it is unconstitutional when applied to his situation, only that it might be unconstitutional in other circumstances not involving a municipal election. "[A] person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied

unconstitutionally to others, in situations not before the Court." *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973). See also, *Mississippi Bd. of Nursing v. Belk*, 481 So. 2d 826, 831 (Miss. 1985); *State of New Mexico v. Manzagol*, 87 N.M. 230, 233, 531 P.2d 1203, 1206 (1975). Therefore, this issue is not properly before the Court and should not be addressed.

IV. WHETHER SECTIONS 21-31-27 AND 21-31-75 ARE UNENFORCEABLE SINCE THEY HAVE NOT BEEN APPROVED BY THE JUSTICE DEPARTMENT AS REQUIRED BY SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, 42 USC 1973c,

Bullock argues that Miss. Code Ann. 21-31-27 and 21-31-75 are unenforceable since they were not precleared by the Justice Department pursuant to section 5 of the Voting Rights Act of 1965, as amended, 42 USC 1973c. Section 5 of the Voting Rights Act requires preclearance before the enforcement of any rules effecting the voting rights of citizens. According to Bullock, 21-31-27 and 21-31-75 place an obstacle to candidates qualifying for elective office, and there is the potential for discrimination, placing a burden upon entry into an elective campaign and limiting the choices available to voters.

The preclearance requirement of the Voting Rights Act is not applicable to 21-31-27 and 21-31-75 of Mississippi's Civil Service Act. The preclearance provisions of 42 USC 1973c are not to be applied retroactively. *Mexican Am. Bar Assoc. of Texas v. State of Texas*, 755 F.Supp. 735, 737 (W.D. Tex. 1990), *Hereford Indep. Sch. Dist. v. Bell*, 454 F.Supp. 143 (D.C. Tex. 1978), *Briscoe v. Bell*, 432 U.S. 404, 413 n. 12 (1977). As the provisions of state law at issue here were enacted in 1944 and the Voting Rights Act was not

enacted until 1965, it has no application in this instance. This issue is therefore without merit.

CONCLUSION

Bullock's employment with the City of Laurel was properly terminated when he qualified as a candidate for mayor against incumbent Bucklew. Miss. Code Ann. 21-31-27 did not apply to him; however, Miss. Code Ann. 21-31-75 did apply. This Court, interpreting that statute, holds that Bullock was prohibited from representing a political candidate, as well as being a political candidate himself. For these reasons, this Court affirms the decision of the trial court below.

JUDGMENT IS AFFIRMED.

PRATHER, P.J., PITTMAN, SMITH AND MILLS, JJ., CONCUR. LEE, C.J., CONCURS IN RESULT ONLY. BANKS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY SULLIVAN, P.J., AND McRAE, J. McRAE, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY SULLIVAN, P.J., AND BANKS, J.